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**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

IN RE:

Cynthia Walsh,

Debtor,

Discover Bank, Issuer of the Discover Card,

Plaintiff,

v.

Cynthia Walsh,

Defendant.

Chapter 7

Case No. 08-24490

Adversary No.

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF
DEBT: U.S.C. § 523(a)(2)(A) and (C)**

NOTICE: this is a Complaint alleging that the Defendant has committed fraud against the Plaintiff in connection with the use of a credit account. The Defendant is strongly urged to review it with an attorney. The Defendant may qualify for free or low cost legal assistance. Please contact the State Bar Association for information.

Plaintiff alleges:

I. PARTIES AND JURISDICTION

1. This adversary proceeding is brought under U.S.C. §523(a)(2)(A) and (C).

**1- COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT**



40320922

2. Plaintiff, a foreign corporation licensed to do business in the State of Illinois with all licenses paid, and otherwise is entitled to bring this action, is a creditor in this case.

3. Defendant filed a Chapter 7 bankruptcy petition on 09/16/2008.

4. The Court has jurisdiction under 28 U.S.C. §§157 and 1334, and 11 U.S.C. §523.

5. This is a core proceeding.

II. CAUSE OF ACTION

6. Defendant entered into a written contract with Plaintiff for an open end consumer credit card plan under Account No. XXXXXXXXXXXXXXXXXXXX3328 ("Account").

7. As of the petition date, Defendant owed \$6,956.61 on the Account.

8. Between 06/25/2008 and 09/01/2008, the Defendant incurred \$6,237.00 in retail charges on the Account (Charges). Of the Account balance, \$6,237.00 of Charges were incurred within 70/90 days of the bankruptcy filing for luxury goods and/or services and/or cash advances for consumer credit. These charges are presumed to be nondischargeable. [See Transaction History, attached as Exhibit A.]

9. The totality of the circumstances when the Charges were incurred shows that Defendant did not intend to repay the Charges:

9.1 the Charges were incurred near the date of the bankruptcy filing;

9.2 the Defendant was in poor financial condition;

9.3 the amount charged is high;

9.4 there are numerous charges in a short period of time;

9.5 multiple Charges were incurred on the same day;

9.6 based on the monthly income, monthly living expenses, and circumstances disclosed in the Schedules and Statement of Financial Affairs, no disposable



income was available to pay the minimum monthly requirement on unsecured debt;

9.7 the minimum monthly payment on the \$205,700 of scheduled unsecured debt (based on a required minimum monthly payment on each account of 2% - 3%) exceeded \$6,171 per month before the petition was filed;

9.8 the Statement of Financial Affairs indicates that no losses from fire, theft, or gambling were incurred for the one year before the petition was filed.

9.9 other unsecured credit was also utilized; and,

9.10 there were not sufficient liquid assets that could have been used to service unsecured debt.

10. Charges were incurred when Defendant could not pay existing financial obligations as they became due.

11. By incurring the Charges on the Account, Defendant represented an intention to repay them.

12. Defendant obtained money from the Plaintiff through fraud and false pretenses, false representations and/or actual fraud.

13. Defendant had a specific intent to defraud Plaintiff by accepting the benefits of the charges without intending to repay them.

14. Defendant's actions constitute material misrepresentations of the facts.

15. Defendant intended for Plaintiff to rely on those misrepresentations.

16. Plaintiff justifiably relied on Defendant's misrepresentations which induced it to lend money to Defendant.

17. The Charges were incurred for consumer debt.



18. Defendant's conduct has damaged Plaintiff in the amount of \$6,237.00.

19. Defendant should be denied a discharge of Plaintiff's claim in the amount of \$6,237.00.

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

1. A monetary judgment in the amount of \$6,237.00, including accrued interest to the petition filing date, plus contract rate interest to date of judgment, to continue to accrue post-judgment;
2. An Order of nondischargeability under 11 U.S.C. § 523 (a)(2)(A), and (C);
3. An award of reasonable attorney fees and costs; and
4. Additional relief as may be just and equitable.

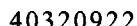
DATED: 12/9, 2008

WEINSTEIN & RILEY, P.S.

By

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Attorneys for Plaintiff



Other Relief Sought

| | | | | | |
|---|--|------------------------------|---|---------------------------------|---------------|
| NAME OF DEBTOR CYNTHIA WALSH | | | BANKRUPTCY CASE NO. 08-24490 | | |
| DISTRICT IN WHICH CASE IS PENDING NORTHERN | | DIVISIONAL OFFICE CHICAGO | | NAME OF JUDGE BRUCE W. BLACK | |
| PLAINTIFF | | | | | |
| DEFENDANT | | | | | |
| ADVERSARY PROCEEDING NO. | | | | | |
| DISTRICT IN WHICH ADVERSARY IS PENDING | | | DIVISIONAL OFFICE | | NAME OF JUDGE |
| SIGNATURE OF ATTORNEY (OR PLAINTIFF) | | | | | |
| DATE December 9, 2008 | | | PRINT NAME OF ATTORNEY (OR PLAINTIFF) Richard S. Ralston | | |

INSTRUCTIONS

The filing of the bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on our court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Parties. Give the name of the parties to the adversary proceeding exactly as they appear on the complaint. Give the names and addresses of the attorneys if known.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.



| Account Holder Information | | | | | |
|----------------------------|-----------------------|--|------------------|--|--|
| Account Holder 1 | | | Account Holder 2 | | |
| Name: | CINDY WALSH | | Name: | | |
| Address: | 404 KNIGHTS BRIDGE CT | | Address: | | |
| City/State/Zip | OSWEGO, IL 60543-8733 | | City/State/Zip | | |
| SSN: | 0080 | | SSN: | | |

| Statement Facsimile | | | | | |
|--------------------------|-----------|-----------------------------|--|----------------------|------------|
| Account Number: | | | -3328 | | |
| Statement Date: 9/4/2008 | | Current Balance: \$6,956.61 | | Credit Limit: \$0.00 | |
| Posting Date | Reference | Transaction Date | Description | CR | Amount |
| 09/03/2008 | | 09/03/2008 | PAYMENT - THANK YOU | - | (\$200.00) |
| 09/01/2008 | | 09/01/2008 | WAL-MART STORE - #1779 BRIDGEVIEW I | - | \$48.19 |
| 09/01/2008 | | 09/01/2008 | PORTILLO'S HOT DOGS CHICAGO IL | - | \$16.81 |
| 08/31/2008 | | 08/31/2008 | DOMINICKS FUEL 1957 OSWEGO IL | - | \$99.75 |
| 08/30/2008 | | 08/30/2008 | DICKS SPORTING GOODS O IL | - | \$60.53 |
| 08/30/2008 | | 08/30/2008 | WAL-MART SC - #3400 OSWEGO IL | - | \$184.95 |
| 08/29/2008 | | 08/29/2008 | MONARCH-BFLO AIRPORT BUFFALO NY | - | \$19.58 |
| 08/29/2008 | | 08/29/2008 | MONARCH-BFLO AIRPORT BUFFALO NY | - | \$59.81 |
| 08/29/2008 | | 08/29/2008 | POTBELLY 007 CHICAGO IL | - | \$6.33 |
| 08/29/2008 | | 08/29/2008 | NOCO EXPRESS #58 CHEEKTOWAGA NY | - | \$27.96 |
| 08/29/2008 | | 08/29/2008 | MIDWAY PARKING CHICAGO IL | - | \$41.00 |
| 08/27/2008 | | 08/27/2008 | EDIBLE ARRANGEMENTS - GRAND RAPIDS | - | \$65.00 |
| 08/26/2008 | | 08/26/2008 | WHOLEFDS NPV 10129 NAPERVILLE IL | - | \$11.88 |
| 08/26/2008 | | 08/26/2008 | PANERA BREAD #0216 OSWEGO IL | - | \$54.49 |
| 08/25/2008 | | 08/25/2008 | WAL-MART SC - #3400 OSWEGO IL | - | \$102.90 |
| 08/25/2008 | | 08/25/2008 | DOMINICKS FUEL 1957 OSWEGO IL | - | \$58.17 |
| 08/24/2008 | | 08/24/2008 | MEIJER #239 OSWEGO IL | - | \$53.36 |
| 08/20/2008 | | 08/20/2008 | MEIJER #239 OSWEGO IL | - | \$57.56 |
| 08/20/2008 | | 08/20/2008 | SWA TLD 52608756105995 DALLAS TX | - | \$5.00 |
| 08/20/2008 | | 08/20/2008 | SHOWCASE BUSINESS CENTER TORRANCE C | - | \$7.58 |
| 08/20/2008 | | 08/20/2008 | INGATE CHICAGO IL | - | \$5.00 |
| 08/20/2008 | | 08/20/2008 | INGATE CHICAGO IL | - | \$5.00 |
| 08/20/2008 | | 08/20/2008 | MCDONALD'S F20065 OSWEGO IL | - | \$5.56 |

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|------------|------------|---|---|------------|
| 08/18/2008 | 08/18/2008 | HP HOME STORE 888-999-4747 CO | - | \$169.98 |
| 08/16/2008 | 08/16/2008 | CHARLOTTE RUSSE 120 AURORA IL | - | \$24.35 |
| 08/16/2008 | 08/16/2008 | VICTORIA'S SECRET STORES AURORA IL | - | \$54.13 |
| 08/16/2008 | 08/16/2008 | MACY'S EAST #263 MANCHESTER CT | - | \$50.00 |
| 08/15/2008 | 08/15/2008 | WALGREENS #4779 MONTGOMERY IL | - | \$46.79 |
| 08/15/2008 | 08/15/2008 | 131 S DEARBORN CHICAGO IL | - | \$22.00 |
| 08/15/2008 | 08/15/2008 | BP OIL 03201126 OSWEGO IL | - | \$42.30 |
| 08/14/2008 | 08/14/2008 | BROWN'S CHICKEN AN NAPERVILLE IL | - | \$39.59 |
| 08/12/2008 | 08/12/2008 | USPS 1615500538 MONTGOMERY IL | - | \$50.80 |
| 08/11/2008 | 08/11/2008 | ENT ENTERTAINMENT BOOK 888 -231-SAVE | - | \$25.00 |
| 08/11/2008 | 08/11/2008 | SHELL 22527440378209 ROMEOVILLE IL | - | \$62.57 |
| 08/11/2008 | 08/11/2008 | UNITED 01621803028400 ROSEMONT IL | - | \$372.50 |
| 08/11/2008 | 08/11/2008 | US AIRWAYS03723184377555 INTERNET A | - | \$10.00 |
| 08/11/2008 | 08/11/2008 | US AIRWAYS03723184377684 INTERNET A | - | \$25.00 |
| 08/11/2008 | 08/11/2008 | MEIJER #239 OSWEGO IL | - | \$40.05 |
| 08/08/2008 | 08/08/2008 | EV & JAYNE'S IRISH INN PLYMOUTH IN | - | \$220.00 |
| 08/04/2008 | 08/04/2008 | MBS DIRECT TEXTBOOKS COLUMBIA MO | - | \$173.11 |
| 07/29/2008 | 07/29/2008 | GOOGLE *EMTCOMPANY GOOGLE.COM/CHCA | - | \$9.95 |
| 07/28/2008 | 07/28/2008 | ARBONNE INTERNATIONAL 800- 272-6663 | - | \$42.65 |
| 07/25/2008 | 07/25/2008 | ZAP ZAPPOS.COM 888-492-7767 NV | - | \$299.00 |
| 07/22/2008 | 07/22/2008 | KERASOTES THEATRES FANDANGO.COM CA | - | \$19.00 |
| 07/21/2008 | 07/21/2008 | EDIBLE ARRANGEMENTS #661 CHICAGO IL | - | \$97.89 |
| 07/19/2008 | 07/19/2008 | CAFEPRESS.COM 877-809-1659 CA | - | \$4.99 |
| 07/19/2008 | 07/19/2008 | PAYMENT - THANK YOU | - | (\$400.00) |
| 07/16/2008 | 07/16/2008 | GAS MART 41 EDWARDSVILLE IL | - | \$54.03 |
| 07/13/2008 | 07/13/2008 | USPS 1615500538 MONTGOMERY IL | - | \$10.40 |
| 07/11/2008 | 07/11/2008 | GIORDANOS OF OSWEGO OSWEGO IL | - | \$50.58 |
| 07/10/2008 | 07/10/2008 | FULLERS CAR WASH OF AU AURORA IL | - | \$19.95 |
| 07/10/2008 | 07/10/2008 | NTB #793 MONTGOMERY IL | - | \$14.29 |

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|------------|------------|--|---|------------|
| 07/10/2008 | 07/10/2008 | JEWEL OSWEGO IL | - | \$57.44 |
| 07/10/2008 | 07/10/2008 | USPS 1615500538 MONTGOMERY IL | - | \$6.45 |
| 07/09/2008 | 07/09/2008 | TJ MAXX #868 OSWEGO IL | - | (\$32.16) |
| 07/09/2008 | 07/09/2008 | TARGET OSWEGO IL | - | \$48.86 |
| 07/09/2008 | 07/09/2008 | TJ MAXX #868 OSWEGO IL | - | \$59.50 |
| 07/07/2008 | 07/07/2008 | MR HUBCAP & WHEELS CRESTWOOD IL | - | \$92.54 |
| 07/06/2008 | 07/06/2008 | CHINA CHEF MONTGOMERY IL | - | \$25.25 |
| 07/05/2008 | 07/05/2008 | BWW #0159 OSWEGO IL | - | \$58.72 |
| 07/05/2008 | 07/05/2008 | JEWEL OSWEGO IL | - | \$113.68 |
| 07/05/2008 | 07/05/2008 | TARGET OSWEGO IL | - | \$159.53 |
| 07/05/2008 | 07/05/2008 | WALGREENS #4779 MONTGOMERY IL | - | \$30.67 |
| 07/04/2008 | 07/04/2008 | DRESS BARN #1039 OSWEGO IL | - | \$121.15 |
| 07/03/2008 | 07/03/2008 | PARTY CITY #477 OSWEGO IL | - | \$31.07 |
| 07/01/2008 | 07/01/2008 | JEWEL OSWEGO IL | - | \$20.13 |
| 06/30/2008 | 06/30/2008 | JEWEL OSWEGO IL | - | \$88.67 |
| 06/30/2008 | 06/30/2008 | SWEET TOMATOES 112 AURORA IL | - | \$24.38 |
| 06/28/2008 | 06/28/2008 | JEWEL-OSGO OSWEGO IL | - | \$48.59 |
| 06/28/2008 | 06/28/2008 | TURTLE WAX CAR WASH/AUTO AURORA IL | - | \$139.00 |
| 06/28/2008 | 06/28/2008 | JEWEL OSWEGO IL | - | \$80.37 |
| 06/28/2008 | 06/28/2008 | TARGET OSWEGO IL | - | \$26.77 |
| 06/28/2008 | 06/28/2008 | OBERWEIS DAIRY OSW Q33 OSWEGO IL | - | \$9.95 |
| 06/28/2008 | 06/28/2008 | TJ MAXX #868 OSWEGO IL | - | \$165.09 |
| 06/28/2008 | 06/28/2008 | GIORDANOS OF OSWEGO OSWEGO IL | - | \$29.49 |
| 06/28/2008 | 06/28/2008 | FAMOUS DAVE'S #2074 OSWEGO IL | - | \$15.96 |
| 06/27/2008 | 06/27/2008 | BEST BUY CO OSWEGO IL | - | \$68.61 |
| 06/26/2008 | 06/26/2008 | BATH&BODY CRESTWOOD IL | - | \$10.80 |
| 06/26/2008 | 06/26/2008 | STARBUCKS USA 00097071 OSWEGO IL | - | \$8.69 |
| 06/26/2008 | 06/26/2008 | BP OIL 01152446 CRESTWOOD IL | - | \$5.58 |
| 06/26/2008 | 06/26/2008 | BP OIL 01152446 CRESTWOOD IL | - | \$62.27 |
| 06/25/2008 | 06/25/2008 | TARGET OSWEGO IL | - | \$104.89 |
| 06/24/2008 | 06/24/2008 | PAYMENT - THANK YOU | - | (\$400.00) |
| 06/24/2008 | 06/24/2008 | REWARD REDEMPTION CREDIT | - | (\$20.00) |
| 06/22/2008 | 06/22/2008 | TRANSFER OF BAL FROM 6011 0076 1449 | - | \$2,020.66 |